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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EYAD KARZOUN, Individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

LUNA INNOVATIONS
INCORPORATED, SCOTT A.
GRAEFF, EUGENE J. NESTRO, and
GEORGE GOMEZ-QUINTERO,

Defendants.

No.

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiff Eyad Karzoun (“Plaintiff”), individually and on behalf of all other
2 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
3 complaint against Defendants (defined below), alleges the following based upon
4 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
5 belief as to all other matters, based upon, among other things, the investigation
6 conducted by and through Plaintiff’s attorneys, which included, among other
7 things, a review of the Defendants’ public documents, public filings, wire and press
8 releases published by and regarding Luna Innovations Incorporated (“Luna
9 Innovations” or the “Company”), and information readily obtainable on the
10 Internet. Plaintiff believes that substantial evidentiary support will exist for the
11 allegations set forth herein after a reasonable opportunity for discovery.

12 **NATURE OF THE ACTION**

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14 1. This is a class action on behalf of persons or entities who purchased
15 or otherwise acquired publicly traded Luna Innovations securities between August
16 11, 2023 and March 25, 2024, inclusive (the “Class Period”). Plaintiff seeks to
17 recover compensable damages caused by Defendants’ violations of the federal
18 securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

19 **JURISDICTION AND VENUE**

20 2. The claims asserted herein arise under and pursuant to Sections 10(b)
21 and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5
22 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

23 3. This Court has jurisdiction over the subject matter of this action
24 pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C.
25 §78aa).

26 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §
27 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged
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1 misstatements entered and the subsequent damages took place in this judicial
2 district.

3 5. In connection with the acts, conduct and other wrongs alleged in this
4 complaint, Defendants (defined below), directly or indirectly, used the means and
5 instrumentalities of interstate commerce, including but not limited to, the United
6 States mails, interstate telephone communications and the facilities of the national
7 securities exchange.

8 **PARTIES**

9 6. Plaintiff, as set forth in the accompanying certification, incorporated
10 by reference herein, purchased Luna Innovations securities during the Class Period
11 and was economically damaged thereby.

12 7. Defendant Luna Innovations is a technology company that is focused
13 on fiber optics. It creates products targeted towards the aerospace, automotive, and
14 communications industries, among others.

15 8. Luna Innovations is incorporated in Delaware and its principal
16 executive offices are located at 301 1st Street, SW, Suite 200, Roanoke, VA 24011.
17 The Company's common stock trades on the NASDAQ exchange under the ticker
18 symbol "LUNA."

19 9. Defendant Scott A. Graeff ("Graeff") served as the Company's Chief
20 Executive Officer ("CEO") and President from prior to the Class Period until
21 March 25, 2024.

22 10. Defendant Eugene J. Nestro ("Nestro") served as the Company's
23 Chief Financial Officer ("CFO") from prior to the Class Period until October 16,
24 2023.

25 11. Defendant George Gomez-Quintero ("Gomez-Quintero") has served
26 as the Company's CFO since October 17, 2023.

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1 **Materially False and Misleading Statements Issued During the Class Period**

2 17. On August 10, 2023, after market hours, Luna Innovations filed with
3 the SEC its quarterly report on Form 10-Q for the period ended June 30, 2023 (the
4 “2Q23 Report”). Attached to the 2Q23 Report were certifications pursuant to the
5 Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Graeff and Nestro
6 attesting to the accuracy of financial reporting, the disclosure of any material
7 changes to the Company’s internal control over financial reporting and the
8 disclosure of all fraud.

9 18. The 2Q23 Report stated the following regarding internal controls:

10 We maintain “disclosure controls and procedures,” as defined in Rules 13a-
11 15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended
12 (the "Exchange Act"), which are controls and other procedures that are
13 designed to provide reasonable assurance that information required to be
14 disclosed by a company in the reports that it files or submits under the
15 Exchange Act is recorded, processed, summarized and reported within the
16 time periods specified in the SEC’s rules and forms. Disclosure controls and
17 procedures also include, without limitation, controls and procedures
18 designed to provide reasonable assurance that information required to be
19 disclosed by a company in the reports that it files or submits under the
20 Exchange Act is accumulated and communicated to the company’s
management, including its principal executive and principal financial
officers, as appropriate to allow timely decisions regarding required
disclosure.

21 Management recognizes that any controls and procedures, no matter how
22 well designed and operated, can provide only reasonable assurance of
23 achieving their objectives and management necessarily applies its judgment
24 in evaluating the cost-benefit relationship of possible controls and
25 procedures. In addition, the design of any system of controls also is based in
26 part upon certain assumptions about the likelihood of future events, and
27 there can be no assurance that any design will succeed in achieving its stated
28 goals under all potential future conditions; over time, controls may become
inadequate because of changes in conditions, or the degree of compliance
with policies or procedures may deteriorate. Because of the inherent

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limitations in a control system, misstatements due to error or fraud may occur and not be detected.

Under the supervision and with the participation of our management, including our President and Chief Executive Officer and our Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this quarterly report. ***Based on this evaluation, our President and Chief Executive Officer and our Chief Financial Officer have concluded that, as of June 30, 2023, our disclosure controls and procedures were effective.***

(Emphasis added).

19. The statement in ¶ 18 was materially false and misleading at the time it was made because the Company lacked effective internal controls, as a result of improper revenue recognition.

20. The 2Q23 Report provided the following, in pertinent part, regarding the Company’s financials:

Luna Innovations Incorporated
Consolidated Balance Sheets (Unaudited)

(in thousands, except share data)

	June 30, 2023
Assets	
Current assets:	
Cash and cash equivalents	\$ 3,277
Accounts receivable, net	33,813
Contract assets	9,601
Inventory	42,003
Prepaid expenses and other current assets	5,159
Total current assets	93,853
Property and equipment, net	4,761
Intangible assets, net	17,371
Goodwill	27,313
Operating lease right-of-use assets	3,670
Other non-current assets	3,321
Deferred tax asset	4,842
Total assets	\$ 155,131
Liabilities and stockholders' equity	
Liabilities:	
Current liabilities:	
Current portion of long-term debt obligations	\$ 3,000
Accounts payable	10,306
Accrued and other current liabilities	11,375
Contract liabilities	3,463
Current portion of operating lease liabilities	1,899
Total current liabilities	30,043
Long-term debt obligations, net of current portion	27,734
Long-term portion of operating lease liabilities	2,062
Other long-term liabilities	419
Total liabilities	60,258
Commitments and contingencies (Note 10)	
Stockholders' equity:	
Common stock, par value \$0.001, 100,000,000 shares authorized, 35,739,827 and 34,901,954 shares issued, 33,908,336 and 33,105,080 shares outstanding at June 30, 2023 and December 31, 2022, respectively	36
Treasury stock at cost, 1,831,491 and 1,796,862 shares at June 30, 2023 and December 31, 2022, respectively	(5,960)
Additional paid-in capital	108,709
Accumulated deficit	(5,734)
Accumulated other comprehensive loss	(2,178)
Total stockholders' equity	94,873
Total liabilities and stockholders' equity	\$ 155,131

Luna Innovations Incorporated
Consolidated Statements of Operations (Unaudited)
(in thousands, except share and per share data)

	Three Months Ended June	
	30,	
	2023	2022
Revenue	\$ 29,164	\$ 26,162
Cost of revenue	12,299	10,199
Gross profit	16,865	15,963
Operating expense:		
Selling, general and administrative	13,439	14,768
Research, development and engineering	2,722	2,665
Amortization of intangible assets	918	992
Total operating expense	17,079	18,425
Operating loss	(214)	(2,462)
Other income/(expense):		
Other (expense)/income	(110)	53
Interest expense, net	(584)	(111)
Total other expense, net	(694)	(58)
Loss from continuing operations before income taxes	(908)	(2,520)
Income tax (benefit)/expense	(350)	422
Net loss from continuing operations	(558)	(2,942)
(Loss)/income from discontinued operations, net of income tax expense (benefit) of \$(346), \$(856), \$(346), and \$166.	(1,038)	591
Gain on sale of discontinued operations, net of tax of \$3,117	—	—
Net (loss)/income from discontinued operations	(1,038)	591
Net (loss)/income	(1,596)	(2,351)
Net loss per share from continuing operations:		
Basic	\$ (0.02)	\$ (0.09)
Diluted	\$ (0.02)	\$ (0.09)
Net (loss)/income per share from discontinued operations:		
Basic	\$ (0.03)	\$ 0.02
Diluted	\$ (0.03)	\$ 0.02
Net loss per share attributable to common stockholders:		
Basic	\$ (0.05)	\$ (0.07)
Diluted	\$ (0.05)	\$ (0.07)
Weighted average shares:		
Basic	33,634,538	32,478,736
Diluted	33,634,538	32,478,736

21. The financials provided in ¶ 20 were materially false and misleading because the Company had improperly recognized revenue in the second quarter of 2023.

22. On November 14, 2023, Luna Innovations filed with the SEC its quarterly report on Form 10-Q for the period ended September 30, 2023 (the “3Q23 Report”). Attached to the 3Q23 Report were certifications pursuant to SOX signed by Defendants Graeff and Gomez-Quintero attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

1 23. The 3Q23 Report contained the following report on internal control
2 over financial reporting. It stated, in pertinent part:

3 We maintain “disclosure controls and procedures,” as defined in Rules 13a-
4 15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended
5 (the "Exchange Act"), which are controls and other procedures that are
6 designed to provide reasonable assurance that information required to be
7 disclosed by a company in the reports that it files or submits under the
8 Exchange Act is recorded, processed, summarized and reported within the
9 time periods specified in the SEC’s rules and forms. Disclosure controls and
10 procedures also include, without limitation, controls and procedures
11 designed to provide reasonable assurance that information required to be
12 disclosed by a company in the reports that it files or submits under the
13 Exchange Act is accumulated and communicated to the company’s
14 management, including its principal executive and principal financial
15 officers, as appropriate to allow timely decisions regarding required
16 disclosure.

17 Management recognizes that any controls and procedures, no matter how
18 well designed and operated, can provide only reasonable assurance of
19 achieving their objectives and management necessarily applies its judgment
20 in evaluating the cost-benefit relationship of possible controls and
21 procedures. In addition, the design of any system of controls also is based in
22 part upon certain assumptions about the likelihood of future events, and
23 there can be no assurance that any design will succeed in achieving its stated
24 goals under all potential future conditions; over time, controls may become
25 inadequate because of changes in conditions, or the degree of compliance
26 with policies or procedures may deteriorate. Because of the inherent
27 limitations in a control system, misstatements due to error or fraud may
28 occur and not be detected.

 Under the supervision and with the participation of our management,
including our President and Chief Executive Officer and our Chief Financial
Officer, we evaluated the effectiveness of the design and operation of our
disclosure controls and procedures as of the end of the period covered by
this quarterly report. ***Based on this evaluation, our President and Chief
Executive Officer and our Chief Financial Officer have concluded that,
as of September 30, 2023, our disclosure controls and procedures were
effective.***

1 (Emphasis added).

2 24. The statement in ¶ 23 was materially false and misleading at the time
3 it was made because the Company lacked effective internal controls, as a result of
4 improper revenue recognition.

5 25. The 3Q23 Report provided the following, in pertinent part, regarding
6 the Company's financials:

7 **Luna Innovations Incorporated**
8 **Consolidated Balance Sheets (Unaudited)**
(in thousands, except share data)

	September 30, 2023
Assets	
Current assets:	
Cash and cash equivalents	\$ 6,028
Accounts receivable, net	39,304
Contract assets	7,324
Inventory	43,318
Prepaid expenses and other current assets	4,207
Total current assets	100,181
Property and equipment, net	4,892
Intangible assets, net	16,143
Goodwill	26,896
Operating lease right-of-use assets	7,999
Other non-current assets	3,338
Deferred tax asset	5,645
Total assets	\$ 165,094
Liabilities and stockholders' equity	
Liabilities:	
Current liabilities:	
Current portion of long-term debt obligations	\$ 3,000
Accounts payable	10,617
Accrued and other current liabilities	14,705
Contract liabilities	4,619
Current portion of operating lease liabilities	2,069
Total current liabilities	35,010
Long-term debt obligations, net of current portion	28,887
Long-term portion of operating lease liabilities	6,178
Other long-term liabilities	407
Total liabilities	70,482
Commitments and contingencies (Note 11)	
Stockholders' equity:	
Common stock, par value \$0.001, 100,000,000 shares authorized, 35,781,127 and 34,901,954 shares issued, 33,943,453 and 33,105,080 shares outstanding at September 30, 2023 and December 31, 2022, respectively	36
Treasury stock at cost, 1,837,674 and 1,796,862 shares at September 30, 2023 and December 31, 2022, respectively	(6,043)
Additional paid-in capital	109,634
Accumulated deficit	(5,273)
Accumulated other comprehensive loss	(3,742)
Total stockholders' equity	94,612
Total liabilities and stockholders' equity	\$ 165,094

Luna Innovations Incorporated
Consolidated Statements of Operations (Unaudited)
(in thousands, except share and per share data)

	Three Months Ended September 30,	
	2023	2022
Revenue	\$ 30,703	\$ 29,153
Cost of revenue	13,074	12,234
Gross profit	17,629	16,919
Operating expense:		
Selling, general and administrative	12,829	11,678
Research, development and engineering	2,719	2,776
Amortization of intangible assets	929	987
Total operating expense	16,477	15,441
Operating income/(loss)	1,152	1,478
Other income/(expense):		
Other income	115	73
Interest expense, net	(613)	(218)
Total other expense, net	(498)	(145)
Income/(loss) from continuing operations before income taxes	654	1,333
Income tax expense/(benefit)	193	165
Net income/(loss) from continuing operations	461	1,168
Income/(loss) from discontinued operations, net of income tax expense/(benefit) of \$ —, \$(78), \$(346), and \$3,205.	—	28
Gain on sale of discontinued operations, net of tax of \$3,117	—	—
Net income/(loss) from discontinued operations	—	28
Net income/(loss)	461	1,196
Net income/(loss) per share from continuing operations:		
Basic	\$ 0.01	\$ 0.04
Diluted	\$ 0.01	\$ 0.03
Net income/(loss) per share from discontinued operations:		
Basic	\$ —	\$ 0.00
Diluted	\$ —	\$ 0.00
Net income/(loss) per share attributable to common stockholders:		
Basic	\$ 0.01	\$ 0.04
Diluted	\$ 0.01	\$ 0.04
Weighted average shares:		
Basic	33,917,700	32,800,690
Diluted	35,218,547	34,104,850

26. The financials provided in ¶ 25 were materially false and misleading because the Company had improperly recognized revenue in the third quarter of 2023.

27. The statements contained in ¶¶ 18, 20, 23, and 25 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) Luna Innovations financial statements from August 10, 2023 to the present included false figures as a result of improper revenue recognition; (2)

1 as a result, Luna Innovations would need to restate its previously filed financial
2 statements from August 10, 2023 to November 14, 2023; (3) Luna Innovations
3 lacked adequate internal controls; and (4) as a result, Defendants’ statements about
4 its business, operations, and prospects, were materially false and misleading and/or
5 lacked a reasonable basis at all times.

6 **THE TRUTH BEGINS TO EMERGE**

7 28. On March 12, 2024, after the market closed, Luna Innovations filed
8 with the SEC a current report on Form 8-K announcing it would need to restate its
9 financial statements for the second and third quarters of 2023 (the “Restatement
10 Announcement”).

11 29. The Restatement Announcement stated the following:
12 A Special Committee of the Board of Directors (the “Board”) of Luna
13 Innovations Incorporated (the “Company”) is conducting an independent
14 review, with the assistance of external legal and financial advisors, *of*
15 *certain transactions for which revenue was recognized in the second and*
16 *third quarters of 2023 that did not qualify for revenue recognition under*
17 *U.S. generally accepted accounting principles*. The Special Committee is
18 examining the circumstances surrounding these issues and is evaluating,
19 among other things, the Company’s disclosure controls and internal control
20 over financial reporting and whether changes in accounting policies or other
21 policies are necessary.

22 While the independent review is ongoing, on March 12, 2024, the Audit
23 Committee (the “Audit Committee”) of the Board, *based on preliminary*
24 *findings of the review, and after consultation with, the Company’s*
25 *management and the Special Committee’s external legal and financial*
26 *advisors, concluded that the Company’s previously issued unaudited*
27 *interim condensed consolidated financial statements for the quarters*
28 *ended June 30, 2023, and September 30, 2023, as previously filed with the*
Securities and Exchange Commission (the “SEC”), should no longer be
relied upon and should be restated.

In connection with the independent review, the Company has identified
material weaknesses in its internal control over financial reporting that
existed as of June 30, 2023, and September 30, 2023, and has re-evaluated

1 ***the effectiveness of the Company's disclosure controls and procedures as***
2 ***of those dates.*** Based on this assessment, the Company's disclosure controls
3 and procedures were ineffective for the quarters ended June 30, 2023, and
4 September 30, 2023. The Company is continuing to evaluate its internal
5 control over financial reporting and will report its remediation plan and
6 further information regarding the material weaknesses when it reports its
7 restated results for the affected periods.

8 As the independent review remains ongoing, the Company has not yet
9 determined the full extent of the impact on the second and third quarters of
10 2023 and whether and to what extent there may be an impact on financial
11 statements for any other periods.

12 The Company's management and the Audit Committee have discussed the
13 matters disclosed in this current report on Form 8-K with Ernst & Young
14 LLP, the Company's independent registered public accounting firm.

15 (Emphasis added).

16 30. Also on March 12, 2024, after the market closed, the Company filed
17 with the SEC a late filing notice on Form NT 10-K (the "Late Filing Notice"). The
18 Late Filing Notice stated the following:

19 Luna Innovations Incorporated (the "Company") is filing this Notification
20 of Late Filing on Form 12b-25 with respect to its Annual Report on Form
21 10-K for the fiscal year ended December 31, 2023 (the "Form 10-K"). ***The***
22 ***Company is unable to file the Form 10-K within the prescribed time period***
23 ***without unreasonable effort or expense.***

24 As announced on March 12, 2024, a Special Committee of the Company's
25 Board of Directors (the "Special Committee") is conducting an independent
26 review, with the assistance of external legal and financial advisors, ***of***
27 ***certain transactions for which revenue was recognized in the second and***
28 ***third quarters of 2023 that did not qualify for revenue recognition under***
U.S. generally accepted accounting principles. The Special Committee is
examining the circumstances surrounding these issues and is evaluating,
among other things, the Company's disclosure controls and internal control
over financial reporting and whether changes in accounting policies or other
policies are necessary. The Company currently anticipates reporting

1 material weaknesses in internal controls related to evaluating customer
2 arrangements for proper revenue recognition and other controls and will be
3 working to remediate these issues.

4 Additional time is needed to complete tasks and steps necessary to prepare
5 and finalize the Company's annual financial statements and other
6 disclosures required to be included in the Form 10-K, as well as to complete
7 the ongoing review of recognition of revenue. There can be no assurance as
8 to how long the review will take or when the Company will be able to
9 complete the preparation and filing of the Form 10-K. However, the
10 Company currently does not expect to file the Form 10-K within the
11 extension period of fifteen calendar days provided under Rule 12b-25 under
12 the Securities Exchange Act of 1934, as amended. In addition, the review is
13 ongoing and the Company has not yet determined the full extent of the
14 impact on the second and third quarters of 2023 and whether and to what
15 extent there may be an impact on financial statements for any other periods.

16 (Emphasis added).

17 31. On this news, the price of Luna Innovations stock fell \$2.24 per share,
18 or 35.78%, to close at \$4.02 on March 13, 2024.

19 32. Then, on March 25, 2024, after the market closed, the Company filed
20 with the SEC a current report on Form 8-K (the "March 25 Form 8-K") which
21 announced that Defendant Graeff had retired, effective immediately. Upon
22 information and belief, Defendant Graeff retired as a result of the misconduct
23 detailed in this complaint. The March 25 Form 8-K stated the following:

24 *Retirement of Scott Graeff as President and Chief Executive Officer and as*
25 *a Board Member*

26 On March 24, 2024, *Scott Graeff retired as the President and Chief*
27 *Executive Officer of the Company and as a member of the Board, effective*
28 *immediately*. After consideration of various alternatives, including
termination with or without cause, *the Board exercised its discretion in*
determining that it was in the best interests of the Company and its
stockholders to accept Mr. Graeff's retirement and provide benefits to Mr.
Graeff in exchange for his continued assistance and compliance with

1 *other obligations as set forth in a separation agreement* (the “Separation
2 Agreement”), which the Company and Mr. Graeff entered into on March 24,
3 2024 (the “Separation Date”).

4 Subject to Mr. Graeff’s release of claims and his compliance with the
5 Separation Agreement and his continuing obligations to the Company under
6 his employment agreement and Confidential Information, Inventions
7 Assignment, Non-competition and Non-Solicitation Agreement, the
8 Company has agreed to provide Mr. Graeff with the following severance
9 benefits: (a) severance payments in the form of continuation of his base
10 salary for a period of nine months following the Separation Date, payable in
11 accordance with the Company’s normal payroll practices, (b) payment of his
12 COBRA premium, if applicable, for up to nine months, and (c) accelerated
13 vesting of 10,000 shares underlying Mr. Graeff’s unvested RSUs. The
14 remainder of Mr. Graeff’s unvested equity awards were forfeited as of the
15 Separation Date.

16 The Separation Agreement also contains certain covenants that are binding
17 upon Mr. Graeff, *including a covenant to cooperate with the Company in*
18 *connection with any investigation of any claims or demands asserted*
19 *against it and with respect to matters arising from events that occurred*
20 *during his period of employment with the Company*. Mr. Graeff also agreed
21 to refrain from taking certain actions regarding the Company and its
22 management and stockholders in light of Mr. Graeff’s status as a holder of
23 the Company’s common stock. The Separation Agreement also contains a
24 release of claims in favor of the Company, subject to customary exceptions,
25 and mutual covenants not to disparage, subject to certain exceptions. In
26 addition, the Separation Agreement contains clawback provisions pursuant
27 to which, in addition to any required clawback under applicable law or
28 listing requirements and the Company’s clawback policies, 100% of all cash
severance payments and accelerated RSUs provided to Mr. Graeff under the
Separation Agreement are subject to clawback upon (a) the Board’s
determination, in its reasonable good faith discretion, that Mr. Graeff
engaged in conduct that constituted “Cause” under his employment
agreement, (b) the Board’s determination, in its reasonable good faith
discretion, that Mr. Graeff materially breached his continued obligations to
the Company, or (c) a finding by a court that Mr. Graeff engaged in bad faith
conduct.

(Emphasis added).

1
2 33. On this news, the price of Luna Innovations stock fell by \$0.41 per
3 share, or 11.54%, to close at \$3.14 on March 26, 2024.

4 34. As a result of Defendants' wrongful acts and omissions, and the
5 precipitous decline in the market value of the Company's common shares, Plaintiff
6 and other Class members have suffered significant losses and damages.

7 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

8 35. Plaintiff brings this action as a class action pursuant to Federal Rule
9 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons
10 other than defendants who acquired the Company's securities publicly traded on
11 NASDAQ during the Class Period, and who were damaged thereby (the "Class").
12 Excluded from the Class are Defendants, the officers and directors of the Company,
13 members of the Individual Defendants' immediate families and their legal
14 representatives, heirs, successors or assigns and any entity in which Defendants
15 have or had a controlling interest.

16 36. The members of the Class are so numerous that joinder of all members
17 is impracticable. Throughout the Class Period, the Company's securities were
18 actively traded on NASDAQ. While the exact number of Class members is
19 unknown to Plaintiff at this time and can be ascertained only through appropriate
20 discovery, Plaintiff believes that there are hundreds, if not thousands of members
21 in the proposed Class.

22 37. Plaintiff's claims are typical of the claims of the members of the Class
23 as all members of the Class are similarly affected by Defendants' wrongful conduct
24 in violation of federal law that is complained of herein.

25 38. Plaintiff will fairly and adequately protect the interests of the
26 members of the Class and has retained counsel competent and experienced in class
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1 and securities litigation. Plaintiff has no interests antagonistic to or in conflict with
2 those of the Class.

3 39. Common questions of law and fact exist as to all members of the Class
4 and predominate over any questions solely affecting individual members of the
5 Class. Among the questions of law and fact common to the Class are:

- 6 • whether the Exchange Act was violated by Defendants' acts as alleged
7 herein;
- 8 • whether statements made by Defendants to the investing public during
9 the Class Period misrepresented material facts about the business and
10 financial condition of the Company;
- 11 • whether Defendants' public statements to the investing public during
12 the Class Period omitted material facts necessary to make the statements
13 made, in light of the circumstances under which they were made, not
14 misleading;
- 15 • whether the Defendants caused the Company to issue false and
16 misleading filings during the Class Period;
- 17 • whether Defendants acted knowingly or recklessly in issuing false
18 filings;
- 19 • whether the prices of the Company securities during the Class Period
20 were artificially inflated because of the Defendants' conduct complained of
21 herein; and
- 22 • whether the members of the Class have sustained damages and, if so,
23 what is the proper measure of damages.

24 40. A class action is superior to all other available methods for the fair
25 and efficient adjudication of this controversy since joinder of all members is
26 impracticable. Furthermore, as the damages suffered by individual Class members
27 may be relatively small, the expense and burden of individual litigation make it
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1 impossible for members of the Class to individually redress the wrongs done to
2 them. There will be no difficulty in the management of this action as a class action.

3 41. Plaintiff will rely, in part, upon the presumption of reliance
4 established by the fraud-on-the-market doctrine in that:

- 5 • the Company's shares met the requirements for listing, and were listed
6 and actively traded on NASDAQ, an efficient market;
- 7 • as a public issuer, the Company filed periodic public reports;
- 8 • the Company regularly communicated with public investors via
9 established market communication mechanisms, including through the
10 regular dissemination of press releases via major newswire services and
11 through other wide-ranging public disclosures, such as communications with
12 the financial press and other similar reporting services;
- 13 • the Company's securities were liquid and traded with moderate to
14 heavy volume during the Class Period; and
- 15 • the Company was followed by a number of securities analysts
16 employed by major brokerage firms who wrote reports that were widely
17 distributed and publicly available.

18 42. Based on the foregoing, the market for the Company's securities
19 promptly digested current information regarding the Company from all publicly
20 available sources and reflected such information in the prices of the shares, and
21 Plaintiff and the members of the Class are entitled to a presumption of reliance
22 upon the integrity of the market.

23 43. Alternatively, Plaintiff and the members of the Class are entitled to
24 the presumption of reliance established by the Supreme Court in *Affiliated Ute*
25 *Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants
26 omitted material information in their Class Period statements in violation of a duty
27 to disclose such information as detailed above.

28 **COUNT I**

1 **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**
2 **Against All Defendants**

3 44. Plaintiff repeats and realleges each and every allegation contained
4 above as if fully set forth herein.

5 45. This Count is asserted against Defendants is based upon Section 10(b)
6 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder
7 by the SEC.

8 46. During the Class Period, Defendants, individually and in concert,
9 directly or indirectly, disseminated or approved the false statements specified
10 above, which they knew or deliberately disregarded were misleading in that they
11 contained misrepresentations and failed to disclose material facts necessary in
12 order to make the statements made, in light of the circumstances under which they
13 were made, not misleading.

14 47. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that
15 they:

- 16 • employed devices, schemes and artifices to defraud;
- 17 • made untrue statements of material facts or omitted to state material
18 facts necessary in order to make the statements made, in light of the
19 circumstances under which they were made, not misleading; or
- 20 • engaged in acts, practices and a course of business that operated as a
21 fraud or deceit upon plaintiff and others similarly situated in connection with
22 their purchases of the Company's securities during the Class Period.

23 48. Defendants acted with scienter in that they knew that the public
24 documents and statements issued or disseminated in the name of the Company
25 were materially false and misleading; knew that such statements or documents
26 would be issued or disseminated to the investing public; and knowingly and
27 substantially participated, or acquiesced in the issuance or dissemination of such
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1 statements or documents as primary violations of the securities laws. These
2 defendants by virtue of their receipt of information reflecting the true facts of the
3 Company, their control over, and/or receipt and/or modification of the Company's
4 allegedly materially misleading statements, and/or their associations with the
5 Company which made them privy to confidential proprietary information
6 concerning the Company, participated in the fraudulent scheme alleged herein.

7 49. Individual Defendants, who are the senior officers of the Company,
8 had actual knowledge of the material omissions and/or the falsity of the material
9 statements set forth above, and intended to deceive Plaintiff and the other members
10 of the Class, or, in the alternative, acted with reckless disregard for the truth when
11 they failed to ascertain and disclose the true facts in the statements made by them
12 or any other of the Company's personnel to members of the investing public,
13 including Plaintiff and the Class.

14 50. As a result of the foregoing, the market price of the Company's
15 securities was artificially inflated during the Class Period. In ignorance of the
16 falsity of Defendants' statements, Plaintiff and the other members of the Class
17 relied on the statements described above and/or the integrity of the market price of
18 the Company's securities during the Class Period in purchasing the Company's
19 securities at prices that were artificially inflated as a result of Defendants' false and
20 misleading statements.

21 51. Had Plaintiff and the other members of the Class been aware that the
22 market price of the Company's securities had been artificially and falsely inflated
23 by Defendants' misleading statements and by the material adverse information
24 which Defendants did not disclose, they would not have purchased the Company's
25 securities at the artificially inflated prices that they did, or at all.

26 52. As a result of the wrongful conduct alleged herein, Plaintiff and other
27 members of the Class have suffered damages in an amount to be established at trial.

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1 53. By reason of the foregoing, Defendants have violated Section 10(b)
2 of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the
3 plaintiff and the other members of the Class for substantial damages which they
4 suffered in connection with their purchase of the Company's securities during the
5 Class Period.

6 **COUNT II**

7 **Violations of Section 20(a) of the Exchange Act**

8 **Against the Individual Defendants**

9 54. Plaintiff repeats and realleges each and every allegation contained in
10 the foregoing paragraphs as if fully set forth herein.

11 55. During the Class Period, the Individual Defendants participated in the
12 operation and management of the Company, and conducted and participated,
13 directly and indirectly, in the conduct of the Company's business affairs. Because
14 of their senior positions, they knew the adverse non-public information about the
15 Company's false financial statements.

16 56. As officers of a publicly owned company, the Individual Defendants
17 had a duty to disseminate accurate and truthful information with respect to the
18 Company's financial condition and results of operations, and to correct promptly
19 any public statements issued by the Company which had become materially false
20 or misleading.

21 57. Because of their positions of control and authority as senior officers,
22 the Individual Defendants were able to, and did, control the contents of the various
23 reports, press releases and public filings which the Company disseminated in the
24 marketplace during the Class Period concerning the Company's results of
25 operations. Throughout the Class Period, the Individual Defendants exercised their
26 power and authority to cause the Company to engage in the wrongful acts
27 complained of herein. The Individual Defendants therefore, were "controlling
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1 persons” of the Company within the meaning of Section 20(a) of the Exchange
2 Act. In this capacity, they participated in the unlawful conduct alleged which
3 artificially inflated the market price of the Company’s securities.

4 58. By reason of the above conduct, the Individual Defendants are liable
5 pursuant to Section 20(a) of the Exchange Act for the violations committed by the
6 Company.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for
9 judgment and relief as follows:

10 (a) declaring this action to be a proper class action, designating Plaintiff
11 as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of
12 the Federal Rules of Civil Procedure and designating Plaintiff’s counsel as Lead
13 Counsel;

14 (b) awarding damages in favor of Plaintiff and the other Class members
15 against all Defendants, jointly and severally, together with interest thereon;

16 (c) awarding Plaintiff and the Class reasonable costs and expenses
17 incurred in this action, including counsel fees and expert fees; and

18 (d) awarding Plaintiff and other members of the Class such other and
19 further relief as the Court may deem just and proper.

20 **JURY TRIAL DEMANDED**

21 Plaintiff hereby demands a trial by jury.

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23 Dated: April 1, 2024
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